

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
ISAAC BRAGG,  
Defendant.

Case No.: 12cr3617-CAB

**AMENDED ORDER DENYING  
WITHOUT PREJUDICE MOTION  
TO REDUCE SENTENCE [Doc. No.  
72]**

On April 13, 2020, defendant Isaac Bragg filed a motion for sentence reduction pursuant to 18 U.S.C sec. 3582(c)(1)(A)(i). [Doc. No. 72.] The government filed a response on May 1, 2020. [Doc. No. 76.] On May 8, 2020, this Court issued an order requesting defendant file, no later than May 18, 2020, a supplemental submission showing evidence that he exhausted administrative remedies. [Doc. No. 77.] As of May 19, 2020, no supplemental submission had been filed. Therefore, on May 19, 2020, the Court denied without prejudice the motion to reduce sentence. [Doc. No. 78.]

On May 21, 2020, Defendant filed a reply. [Doc. No. 80.] Having reviewed and considered the late-filed reply, and for the reasons set forth below, the motion to reduce sentence is **DENIED WITHOUT PREJUDICE**.

Under 18 U.S.C § 3582(c), a court may not modify a term of imprisonment once it has been imposed except upon motion of the Director of the Bureau of Prisons (“BOP”),

1 or upon motion of the defendant. Before filing such a motion on his own, the defendant  
 2 must first petition the BOP to file such a motion on his behalf. A court may grant the  
 3 defendant's own motion for a modification in sentence only if the motion was filed "after  
 4 the defendant has fully exhausted all administrative rights to appeal a failure of the BOP  
 5 to bring a motion on the defendant's behalf" or after 30 days have passed "from the  
 6 receipt of such a request by the warden of the defendant's facility, whichever is earlier."  
 7 18 U.S.C. § 3582(c)(1)(A).

8 Proper exhaustion is a prerequisite to the defendant initiating the motion for  
 9 sentence reduction. The statute requires defendant exhaust administrative remedies or  
 10 wait 30 days before moving in court for a sentence reduction. Section 3582(c) states that  
 11 a court may not modify a term of imprisonment except when these conditions are met.  
 12 There is no statutory exception excusing the exhaustion requirement. Before the court  
 13 may even consider whether the defendant's circumstances are extraordinary and  
 14 compelling to justify a sentence reduction, the defendant must first demonstrate he has  
 15 met the criteria for bringing his motion to the court.

16 In his reply, Defendant argues that a letter sent by another inmate to the  
 17 warden on March 1, 2020 [Doc. No. 80 at 12]<sup>1</sup> should suffice to fulfill Defendant's  
 18 exhaustion requirement. [Doc. No. 80 at 5-6.] First, Defendant concedes that, under BOP  
 19 policy, one inmate may not submit a request for reduction in sentence on behalf of  
 20 another inmate. [Doc. No. 80 at 6.] Moreover, the letter written by inmate Brown is  
 21 generic and does not provide any of the grounds for relief that are presented in  
 22 Defendant's motion to this Court. For example, in the motion, Defendant asserts that he  
 23 is particularly at risk for serious illness from COVID-19 because he suffers from  
 24 hypertension, a Body Mass Index greater than 25, and a history of tuberculosis. [Doc.

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 27 <sup>1</sup> The letter is written by inmate Terrence Brown to Warden Garrido "[o]n behalf of myself [Brown] and  
 28 similarly situated inmates. . . ." [Doc. No. 80 at 12.] It is a generic request that the warden identify  
 inmates over the age of 50 with pre-existing medical conditions and file motions to reduce sentences on  
 their behalf. *Id.*

1 No. 72 at 3.] None of those items are mentioned in the letter by Inmate Brown.  
2 Therefore, Inmate Brown's generic letter is insufficient to fulfill Defendant's exhaustion  
3 requirement. *See United States v. Mogavero*, 15cr74-JAD-NJK, 2020 WL 1853754, at  
4 \*2 (D. Nev. April 3, 2020)(proper exhaustion requires the inmate present the same factual  
5 basis for the compassionate-release request to the warden as he presents to the court).

6 Accordingly, the motion to reduce sentence is **DENIED WITHOUT**  
7 **PREJUDICE** for lack of jurisdiction.

8 **IT IS SO ORDERED.**

9 Dated: May 22, 2020



Hon. Cathy Ann Bencivengo  
United States District Judge